

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WISCONSIN

CEASAR AVILA

Plaintiff,

v.

Case No. 17-cv-1190

WHEATON FRANCISCAN HEALTHCARE, ALL SAINTS, INC.

Defendant.

COMPLAINT

NOW COMES Plaintiff Ceasar Avila by his attorneys, Arellano & Phebus, S.C., by Attorney Victor M. Arellano and Attorney Douglas J. Phebus, and as for his complaint alleges and shows the court as follows:

**I.
NATURE OF THE CLAIM**

1. Plaintiff Ceasar Avila ("Plaintiff") brings this action pursuant to the Civil Rights Act of 1964 (as amended in 1991), 42 USC § 2000, et. seq., (Title VII), 42 USC § 1981, and the Americans with Disabilities Act (ADA).

**II.
JURISDICTION AND VENUE**

2. The court has jurisdiction pursuant to 28 U.S.C. 1331. Venue is proper pursuant to 28 U.S.C. § 1343, 1331, and under the 14th amendment of the U.S. constitution.

All administrative remedies have been exhausted and a Right to Sue Letter was issued by the Federal Equal Opportunity Commission (see attached).

**III.
PARTIES**

3. Plaintiff Ceasar Avila is an adult with an address at 3117 Kearney Avenue, Racine, WI 53403.

4. Defendant Wheaton Franciscan Healthcare, All Saints, Inc. operates a hospital in Glendale, Wisconsin.

4a. Its registered agent is Corporation Service Company with an address at 8040 Excelsior Drive, Suite 400, Madison, Wisconsin 53717.

IV. FACTUAL ALLEGATIONS

5. Plaintiff began his employment with defendant in March 2014 as an environmental assistant.

6. Plaintiff witnessed a supervisor Miguel Torres ridiculing a co-worker based upon the co-worker's disability, multiple sclerosis. Torres repeatedly referred to that co-worker as retarded or a retard. Plaintiff complained about this discrimination to Torres' supervisor, Brad Schroeder.

7. Plaintiff witnessed Torres discriminate against an African American co-worker based upon his race. Torres was upset because he believed that the African-American co-worker was dating a white woman and thought that was inappropriate for an African-American man to do based upon his race. Plaintiff complained about this discrimination to Torres's supervisor, Brad Schroeder.

8. Plaintiff has migraines and depression which are disabilities pursuant to the Americans with Disabilities Act. Among other things it affects his ability to work. Plaintiff requested August 24-26, 2015 off from work due to these disabilities.

9. Plaintiff was terminated by letter received September 4, 2015. Plaintiff alleges that this was in retaliation for his complaints of racial discrimination and disability discrimination by Miguel Torres and was in violation of the ADA as the employer alleged that the dates missed due to the disability were a reason for the termination.

10. At all times material hereto Plaintiff had a performance history which met the reasonable expectations of his employer.

11. Upon information and belief Defendant has an anti-discrimination and anti-retaliation policy in place.

10. Plaintiff has sustained loss of wages and suffered physical pain and emotional distress as a result of the actions of Defendant which were in violation of the Civil Rights Act of 1964 (as amended in 1991), 42 USC § 200, et. seq., (Title VII), 42 USC § 1981, and the Americans with Disabilities Act (ADA).

WHEREFORE, Plaintiff demands the following:

- a. reinstatement into his prior position with an order to accommodate his disability and back pay;

- b. compensatory damages for the emotional injury, distress, and physical pain and suffering;
- c. an injunction against Defendant ordering that they cease and desist the discriminatory practices towards Plaintiff;
- d. punitive damages;
- e. reasonable attorney's fees and costs incurred in both the administrative action before the State Equal Rights Division as well as the instant Federal Court; and
- f. any other relief the court may deem just and proper.

Dated this 31st day of August, 2017.

ARELLANO & PHEBUS, S.C.
Attorneys for Plaintiff

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